

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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|---------------------------|---|---------------------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| -VS- |) | Criminal No. 10-10366-PBS |
| |) | Pages 1 - 26 |
| YEUDY VIZCAINO, |) | |
| |) | |
| Defendant |) | |

SENTENCING

BEFORE THE HONORABLE PATTI B. SARIS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

EMILY O. CUMMINGS, ESQ., Assistant United States Attorney,
Office of the United States Attorney, 1 Courthouse Way, Boston,
Massachusetts, 02210, for the Plaintiff.

JAMES H. BUDREAU, ESQ., Law Office of James Budreau,
20 Park Plaza, Suite 1405, Boston, Massachusetts, 02116,
for the Defendant.

ALSO PRESENT: Susan Walls, U.S. Probation Office.

United States District Court
1 Courthouse Way, Courtroom 19
Boston, Massachusetts 02210
September 8, 2011, 2:35 p.m.

LEE A. MARZILLI
OFFICIAL COURT REPORTER
United States District Court
1 Courthouse Way, Room 7200
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P R O C E E D I N G S

THE CLERK: Court calls Criminal No. 10-10366, United States v. Vizcaino. Could counsel please identify themselves for the record.

MS. CUMMINGS: Good afternoon, your Honor. Emily Cummings on behalf of the United States.

THE COURT: Yes, thank you.

MR. BUDREAU: And, your Honor, James Budreau on behalf of Mr. Vizcaino. Good afternoon.

MS. WALLS: Susan Walls on behalf of Probation.

THE COURT: Thank you. I understand you're not well?

MR. BUDREAU: I'm not well, but I'm functional, so --

THE COURT: You have back problems?

MR. BUDREAU: Yes. I ruptured a disk, so --

THE COURT: Is it better to stand or to sit?

MR. BUDREAU: It doesn't matter at the moment.

THE COURT: Well, whatever is better is fine with me, all right?

So we have one objection to the United States Sentencing Guidelines, which I'm not sure makes a difference.

MR. BUDREAU: I don't think it makes a difference, your Honor. I do it just to preserve the issue as much as I have to do it.

THE COURT: Okay, so at this point I'm not ruling on it because I don't need to, so if you end up doing what so many

1 defense attorneys do in state court, then it's preserved, and I
2 will address it if I ever need to.

3 MR. BUDREAU: Thank you, your Honor.

4 THE COURT: So that having been said, as I understand
5 it, there are no other objections?

6 MR. BUDREAU: There are none.

7 THE COURT: Have you had a chance to review the full
8 report with your client?

9 MR. BUDREAU: Yes, I have, your Honor.

10 THE COURT: Okay. So at this point I am going to
11 adopt the Presentence Report in particular and impose -- and
12 sort of obviously calculate the advisory Guideline range, which
13 is extremely high because of the nature of the prior record and
14 the mandatory minimum involved, but, in any event, it's 34 and
15 6, 262 to 327 months, eight years supervised release, \$17,800
16 to \$10 million, and a \$100 special assessment. Does anyone
17 have an objection to the advisory range?

18 MR. BUDREAU: Not a legal objection, your Honor.

19 MS. CUMMINGS: No, your Honor.

20 THE COURT: Okay, I understand.

21 MS. WALLS: Your Honor, it's \$100 per count, and there
22 are four counts.

23 THE COURT: Oh, I got that wrong. So \$400 special
24 assessment. Thank you.

25 Okay, so, now, I read somewhere that the government

1 had agreed to a variance.

2 MS. CUMMINGS: Your Honor, that's correct. At the
3 Rule 11 hearing the government stated the Guideline range as
4 188 to 235 months, and because we did state that, we do stand
5 by that as our range that we're recommending, specifically the
6 188 months. If I could --

7 THE COURT: Yes, yes, why don't you address, and then
8 I'll hear from Mr. Budreau, sitting or standing, and then of
9 course from his client who has a right to allocute. So go
10 ahead.

11 MS. CUMMINGS: This is actually a side issue that your
12 Honor asked the government to address back in May. It's
13 Document 29 in the docket, and it's as to whether or not
14 Mr. Vizcaino had to affirm the 851 predicate conviction. And
15 it appears to be, and it's the government's position, that he
16 does in fact have to affirm the 851 prior conviction prior to
17 sentencing being imposed, which I don't believe he did in May,
18 but I know there were subsequent hearings, so I don't know if
19 that actually took place.

20 THE COURT: Oh, I remember this. We kept going back
21 and forth on it. What's the prior conviction you want him to
22 confirm?

23 MS. CUMMINGS: The prior conviction was a November 24,
24 2004 conviction out of Lynn District Court to possession with
25 intent to distribute Class D, which is marijuana, and the

1 docket number was 04-13-CR-005781.

2 THE COURT: What did he get?

3 MS. CUMMINGS: I don't have it listed on the
4 information, your Honor.

5 (Pause.)

6 MS. CUMMINGS: It was a three-month committed
7 sentence, your Honor.

8 THE COURT: This is an unusual case in that the
9 criminal history points are so high -- they're at 36 -- and yet
10 he actually hadn't done that much time in state court, and I'm
11 wondering, since I get so few 851s, why did the government
12 choose this?

13 MS. CUMMINGS: Your Honor, I think, and if the Court
14 will allow me sort of to --

15 THE COURT: Were you in at the get-go, or did you
16 inherit this from somebody?

17 MS. CUMMINGS: I was, your Honor.

18 THE COURT: Okay.

19 MS. CUMMINGS: And, again, if I could sort of draw
20 from my state practice experience, Mr. Vizcaino appears to have
21 a record indicative of somebody with a history of substance
22 abuse. I think, despite his denials of any problems, he also
23 admits to what could be construed as alcohol abuse, marijuana
24 abuse, and heroin abuse. Frequently in the state court system,
25 given the volume of cases -- the record that Mr. Vizcaino has

1 is somebody who's stealing to support a habit -- so frequently
2 the state courts, at least from my own personal experience, and
3 perhaps Mr. Budreau has had the same experience, will attempt
4 sort of a treatment regimen in the hopes that somebody in
5 Mr. Vizcaino's situation will learn from his experience.

6 THE COURT: Well, did that happen here?

7 MS. CUMMINGS: It doesn't appear so.

8 THE COURT: Well, so don't put it in the record. So
9 he's an addict who's gone untreated.

10 MS. CUMMINGS: Well, the Court inquired as to why the
11 851 was filed.

12 THE COURT: Yes, just it was --

13 MS. CUMMINGS: That's part of the reason why.

14 THE COURT: It was harsh to file it. Actually, I get
15 so few 851s filed, and it's usually somebody who has more of a
16 history of violence.

17 MS. CUMMINGS: Well, Mr. Vizcaino does have a history
18 of gang affiliation.

19 THE COURT: Is that the reason why?

20 MS. CUMMINGS: That's part of the reason. And then
21 the other reason is, Mr. Vizcaino openly admitted that he was
22 selling heroin that was causing overdoses. I don't find it to
23 be harsh to file an 851 on somebody who's --

24 THE COURT: Just I want to know because it's rare
25 here.

1 MS. CUMMINGS: Well, that's the reason: He's selling
2 something that's causing people to overdose and potentially
3 fatalities, and there were fatalities all over Lynn.

4 THE COURT: Were these fatalities from his stuff?

5 MS. CUMMINGS: Some of them were believed to be,
6 though it hasn't been proven, attributable to the heroin that
7 Mr. Vizcaino, and particularly his supplier, were selling. So
8 those were the reasons that went into the filing of the 851.

9 THE COURT: All right, well, that's worth hearing. So
10 what gang do you think he's affiliated with?

11 MS. CUMMINGS: He admitted to being affiliated with
12 the Latin Kings. He has gang tattoos, and he also sort of
13 talked openly about it.

14 THE COURT: Did you file a sentencing memo?

15 MS. CUMMINGS: I did not, your Honor.

16 THE COURT: And the other is because you have, at
17 least in your view, cause to believe that some of the heroin
18 being sold by the supplier, maybe through him, caused people to
19 overdose in Lynn?

20 MS. CUMMINGS: That is part of it, and it's on
21 videotape, as admitted by Mr. Vizcaino, as he's cautioning the
22 cooperating witness, when he sells this to his supposed
23 customers, to be careful because it's causing people to
24 overdose. And that adds a very serious element to the case in
25 which also, in conjunction with everything else, led to the

1 filing of the 851.

2 THE COURT: All right, and so you're recommending a
3 188? Is there a reason how you got to 188?

4 MS. CUMMINGS: The 188 was based on my calculations of
5 the Guidelines prior to the 851 being filed. I also believe --

6 THE COURT: Oh, oh, oh, so you're trying to temporize.
7 No?

8 MS. CUMMINGS: Your Honor, I don't know that this is
9 somebody who needs to be sent for 262 months to --

10 THE COURT: So it's your view of "sufficient but not
11 greater than necessary"?

12 MS. CUMMINGS: Yes.

13 THE COURT: This is the government's take on the
14 parsimony clause?

15 MS. CUMMINGS: It is, your Honor. I think it's a
16 significant sentence. It's the hopes of the government that
17 Mr. Vizcaino will finally clean up his act and will
18 sufficiently be punished for what it was that he was doing.
19 Possibly he will seek treatment, possibly he'll get treatment
20 and he'll make different decisions when he's finally released,
21 but 188 months seems sufficient to punish Mr. Vizcaino for what
22 he's been charged with. It takes into account his history, but
23 it's also not the 262 months that it could be, so essentially --

24 THE COURT: So you got it how, you calculated the
25 Guidelines without the 851?

1 MS. CUMMINGS: Correct, your Honor.

2 THE COURT: So you put it in and took it out again
3 essentially?

4 MS. CUMMINGS: More or less, your Honor.

5 THE COURT: All right, all right.

6 MS. CUMMINGS: And really the 851 was for the
7 basement, not the ceiling.

8 THE COURT: Thank you very much.

9 MR. BUDREAU: Your Honor, I'll address the selling of
10 drugs, so to speak, since it really hasn't been a focus in this
11 case at all. I think that may have been one of the reasons why
12 they filed the 851. However, I don't think there's been
13 sufficient evidence presented since that any of the drugs that
14 he had were actually hot. I think that in that area, there
15 were some problems with drugs in the Lynn area at the time.
16 There's no evidence it was connected to him or to his source of
17 drugs at the time. He was talking about his knowledge of the
18 fact that there were hot drugs out there.

19 THE COURT: What paragraph are we talking about?

20 MR. BUDREAU: I don't even know that it's included in
21 here, your Honor.

22 THE COURT: Is it?

23 MR. BUDREAU: I don't think it's -- I think it's --
24 I'm just referring to her allegations. I think the evidence
25 was so insufficient that it didn't rise to the level of

1 preponderance of the evidence.

2 THE COURT: Is it Paragraph 47 you're referring to?

3 MR. BUDREAU: It might be.

4 THE COURT: "In fact, Vizcaino told the CW that the
5 heroin was so good it could almost kill someone," is that what
6 you're referring to there?

7 MS. CUMMINGS: Yes, your Honor.

8 MR. BUDREAU: So, I mean, there's maybe some evidence
9 that he knew that in Lynn that some people were injured by
10 heroin. My understanding, and, frankly, in conversations with
11 my client, is that, you know, that sort of thing is not unusual
12 in the heroin world; people like to know it's good stuff. So
13 it's puffing. It would be puffing. If indeed it was anything,
14 it was puffing. There's no evidence that he knew that the
15 stuff was connected or that it was connected to bad drugs in
16 the area.

17 Mr. Vizcaino was a drug addict. Despite his
18 declinations of that, he has a history of drug use, of drug
19 abuse. That's what led him into the selling of heroin. He was
20 using at the time. He went through severe withdrawal when he
21 came into prison. He clearly has a problem. There's no
22 question of that.

23 In terms of a sentence that would reflect that which
24 is necessary to protect the public, and in order to be
25 sufficiently harsh for Mr. Vizcaino, I did recommend 120 months,

1 your Honor. That's the minimum mandatory. I think that's
2 sufficient for a number of reasons as I explained in my
3 memorandum. His criminal history, while long, is of a petty
4 nature. I mean, it's clear that this guy is involved in drugs,
5 the type of stuff he's doing, stealing cars, you know, stealing
6 things out of cars. There's some B&Es, but it's mostly, you
7 know, attaching plates. In fact, I counted up all the points
8 relative to car offenses, and half of his points are relegated
9 to car offenses. So they're not of a serious nature.

10 There are a couple involved with resisting arrest.
11 There's one involved with assault and battery on a girlfriend,
12 which is pushing her. Based upon what the complaint says, it
13 was not violent in the sense of punching someone or hurting
14 someone, and in fact I don't think there's any evidence that
15 he's been involved in any sort of violent attacks.

16 So I think this is a person who has a history, a long
17 repetitive history of coming through the state system,
18 supporting his drug habit through stealing things, and, as a
19 result, accumulating a lot of criminal history points. He
20 hasn't served a lot of time. I think two years in the house of
21 correction was the longest that he served. He's done no state
22 time, and I think that a sentence of 120 months is a
23 significant, a serious jump for him in terms of time served.
24 It would satisfy every element of the Guidelines. In fact, I
25 think it is harsher than is necessary, but because it's a

1 minimum mandatory, it's the minimum the Court could impose.

2 But I think it would in that context, understanding that it's
3 harsher than necessary, it still would address all the concerns
4 that the Court, the public, and the Sentencing Commission have
5 about someone like him. It would give him the opportunity to
6 get the type of vocational skills that he clearly doesn't have.
7 It would give him the opportunity to reflect upon his conduct
8 and what the repetitive nature of his conduct will result in in
9 the future. It will give him the opportunity to get healthcare
10 treatment, which he clearly needs. There's an episode, in
11 fact, in his health --

12 THE COURT: Has he had health -- you know, your sister
13 was sort of speculating that he maybe never got it.

14 MR. BUDREAU: He never really got any treatment. I
15 think there's one opportunity where he got some drug treatment
16 in jail. And he also, there's an episode back in 2006, 2008,
17 his mother passed away, and he tells me that he had
18 hallucinations, auditory hallucinations at that point; and he
19 actually got treatment, and it's in the records, for that for a
20 short period of time. He says that after he got out of jail,
21 he no longer had those problems. Now, that might be because he
22 was self-medicating with drugs at the time, but he tells me
23 that he never had them before his mother passing away and he
24 hasn't had them since, but he had them during that short period
25 of time when he was in jail. His mother passed away, he didn't

1 have her available to him, and he had hallucinations, and he
2 was treated for that. So whether or not there's something
3 going on in the background, I'm not sure, your Honor, but I'm
4 sure that during the period of time that he is incarcerated, he
5 will get the opportunity to have that sort of evaluation done
6 and that sort of treatment done, if indeed it's necessary.

7 I think that the ten years is something that will send
8 a message to the community, his peers, it sends a message to
9 him that this sort of conduct is not going to be condoned by
10 the Federal Court or by any courts. But I do think a jump from
11 two years to even ten years is so significant that it does fall
12 into the realm of harsh, your Honor, and I don't think anything
13 more is necessary. Why add five more years on? Why add three
14 more years on? It doesn't make any sense. There's no
15 measurement for that to have a rational basis to add onto 120
16 months. 120 months is enough. And I think that the eight
17 years supervised release is even more important here, even more
18 critical, because it does give both the federal government, the
19 public, as well as Mr. Vizcaino an opportunity for him to be
20 supervised when he's released, for drug treatment --

21 THE COURT: How old is he?

22 MR. BUDREAU: He's thirty-four years old. When he
23 gets out on a ten-year sentence, he's going to be early
24 forties. If he has a fifteen-year sentence, he's into his
25 upper forties. And one of the biggest problems someone like

1 him has with the criminal history is that it's hard to get
2 employed. Can you imagine in his upper forties what it's going
3 to be like? In his early forties, he's in a better place, he's
4 in a much better place than if he's in his upper forties. You
5 know, I'm fifty, and I understand the impact of age on
6 employment, but I think with someone like himself, you know,
7 both physically and --

8 THE COURT: Has he ever really worked?

9 MR. BUDREAU: He's done some work, you know, but not a
10 whole lot of work, your Honor.

11 THE COURT: I have that somewhere in here.

12 MR. BUDREAU: I don't think there's anything that
13 could --

14 THE COURT: No.

15 MR. BUDREAU: -- any measurement of work. I think
16 he's getting by. I think he's relying on his -- he was relying
17 on his mother for a long period of time. I do think -- he
18 doesn't have any of the skills. I don't remember --

19 (Discussion between Mr. Budreau and the defendant.)

20 MR. BUDREAU: He's not a high school grad. It gives
21 him an opportunity to get a GED, and all the things that he
22 hasn't done, focus it -- you know, he's got seven, eight
23 more -- well, actually he'll have almost eight and a half years
24 because at a ten-year sentence, my understanding is, even if
25 the Court ran it concurrent with his state time that he's --

1 THE COURT: I was going to ask you about that. When
2 is the state time about to run?

3 MR. BUDREAU: That will be out in October? When's
4 your state time going to run?

5 (Discussion between Mr. Budreau and the defendant.)

6 THE COURT: Do you know?

7 MS. WALLS: Your Honor, I called to ask about it, and
8 I don't have the notes handy, but it was sometime in 2012.

9 THE COURT: So it could be a full other year?

10 MR. BUDREAU: A full more year, your Honor. So I
11 certainly would ask that it's concurrent for that period of
12 time, but I don't know that the Court can go back, and even
13 though it's --

14 THE COURT: Well, I wouldn't anyway, but I would be
15 receptive to running it concurrently. What was the state
16 sentence for? Is it another distribution?

17 MR. BUDREAU: It was the same case. It's a related
18 case, your Honor. It was the same drugs.

19 THE COURT: Well, we're not double counting, right?
20 The drugs in the state case we're not including here, are we?

21 MR. BUDREAU: No, but it is related conduct. It's
22 within the same conspiracy in the sense that it happened all at
23 the same time. He was arrested in the state case before he was
24 arrested in this case, but all the conduct in this case
25 occurred before the state case.

1 THE COURT: Right, but the amount of drugs, was it
2 included?

3 MS. WALLS: Your Honor, the amount of drugs, number
4 one, we didn't have drug certs, so we did an estimate; and,
5 number two, it didn't change the range because based upon our
6 conservative estimates, it would have not been more than --

7 THE COURT: If it's all a course of conduct, it would
8 make sense to run it concurrently.

9 MS. WALLS: It was basically a continuation of the
10 federal case, the state case.

11 MR. BUDREAU: But my point is, he's going to serve
12 extra time on the state end. He already --

13 THE COURT: No, he won't. I'll run it concurrent.

14 MR. BUDREAU: Right. What?

15 THE COURT: I'll run it concurrently.

16 MR. BUDREAU: Yeah, but backwards, you can't run
17 concurrent backwards, so --

18 THE COURT: Oh, I see.

19 MR. BUDREAU: So I guess my point is, your Honor, that
20 ultimately a ten-year sentence will serve the purpose of the
21 Guidelines and 3553(a).

22 My client, frankly, I've spoken to him at length about
23 allocuting. He doesn't feel like he has the necessary skills
24 to do that, your Honor. When I say "skills," just being able
25 to stand up and speak, he's just too nervous about it.

1 THE COURT: Mr. Vizcaino, do you want to say anything?
2 Is that "no"? You're shaking your head "no"?

3 MR. BUDREAU: You have to reply "yes" or "no."

4 THE DEFENDANT: No, ma'am.

5 MR. BUDREAU: And that's not out of --

6 THE COURT: Well, can I ask you a question. You don't
7 have to answer if you don't want, but there's going to be a
8 serious prison sentence. That's the bad news. The good news
9 is, when you get out there are services -- why don't you stand
10 up for a minute -- there are services the court can provide.
11 You've got problems. You know, you're selling heroin, a nasty
12 drug, but you're also an addict, is that right?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: So would you want to do something like the
15 drug court when you get out?

16 THE DEFENDANT: If it's in place.

17 THE COURT: If what?

18 Have you talked to him about that?

19 MR. BUDREAU: I have talked to him, your Honor, about
20 the drug program, not drug court. I don't know that I'm
21 familiar with the drug court.

22 THE COURT: You know, Judge Sorokin's thing. I
23 shouldn't call it that, but, you know, the Restart Program,
24 CARE or Restart.

25 MR. BUDREAU: I haven't had any clients go into that

1 program, your Honor, so --

2 THE COURT: Really?

3 MR. BUDREAU: -- I'm just not familiar with it.

4 THE COURT: I think he has to request it.

5 MR. BUDREAU: That's a post-sentence event?

6 THE COURT: Yes, yes.

7 MS. WALLS: Care actually is the drug court, and it's
8 a voluntary program that he would need to -- it can only be
9 imposed as a recommendation, you recommend that he participate
10 in it, but ultimately he has to agree to it.

11 THE COURT: Well, I'm going to make that
12 recommendation, and you'll have to agree and you need to think
13 about it, but let me tell you about it because you are the
14 classic guy I'd like to have in it because you have 36 criminal
15 history points, and to get into the highest category, you only
16 need 13. I mean, that's huge. You don't often see a record
17 this extensive.

18 Now, as your lawyer points out, you haven't ever done
19 much time, but the drug program is a structure for you of a
20 judge who cares about you and will see you periodically. Is it
21 every week? Is that when they come in? But if you take drugs,
22 you could get revoked overnight. On the other hand, if you are
23 consistent with the program, and it's very structured, you can
24 get time off your supervised release. So it's something I want
25 you to think about. You're exactly the kind of person I had in

1 mind. And you don't have to make a decision now. Is that
2 right?

3 MS. WALLS: No, your Honor. He would make the
4 decision when he comes out. And there's also a question of
5 eligibility because I know that there is an indication that he
6 was using heroin during the couple of months immediately prior
7 to his arrest, but his primary drug that he's been using for
8 years and years is marijuana, and generally people with
9 marijuana problems aren't considered to be appropriate for
10 CARE. They're more referred to Restart because the nature of
11 the addiction is --

12 THE COURT: All right, so Restart means essentially,
13 if they don't view you by the time you get out as having an
14 addiction problem on a drug that they work the hardest with,
15 they may put you into another one, which is really just a
16 reentry court but a similar kind of concept of the structure of
17 a judge watching over you. Do you feel as if you need drug
18 treatment?

19 THE DEFENDANT: (Nodding affirmatively.)

20 THE COURT: You can tell me.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: You do? So would you like me to recommend
23 the RDAP program in federal prison, the program for drug
24 offenders?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: What do you want to do when you get out?
2 What kind of vocation do you want? You've got to work. Don't
3 keep looking at him. He doesn't know what you want to do. How
4 far did you go in school?

5 THE DEFENDANT: Eighth grade.

6 THE COURT: Can you read?

7 THE DEFENDANT: Yeah.

8 THE COURT: Okay, do you need a GED?

9 THE DEFENDANT: Yes.

10 THE COURT: So maybe a requirement that he pursue a
11 GED. But try and get that in prison as well. You have a lot
12 of time, try and get your GED, and then maybe try and provide
13 some vocational training and basic skills when you get out
14 because you can't earn your living selling heroin. That's
15 obvious now, I hope.

16 MR. BUDREAU: And, your Honor, if I may, just my
17 experience over the last four or five months with Mr. Vizcaino,
18 one thing he said to me is that he can't stand being in
19 Middleton because there's nothing to do. And he doesn't
20 meaning playing basketball. He means in terms of bettering
21 himself. He really is -- he's voiced that to me a number of
22 times and not in the context of sentencing.

23 THE COURT: Right. I mean, the bad news is, you have
24 this incredibly rough sentencing scheme in Federal Court
25 because you're now such a recidivist, you end up here, and

1 that's not good news for you. But when you get out, the good
2 news is, we actually have money, unlike the state system, to
3 give you things like drug treatment.

4 So, all right, thank you. This is what I'm going to
5 do: I'm going to impose a sentence of 144 months, which is
6 below what the government requested and above what your
7 attorney requested. And let me start with the nature of the
8 offense. Heroin is a nasty drug. I often wonder why the same
9 stigma doesn't attach to heroin as like crack or something
10 because I think that heroin is a horribly addictive drug and it
11 kills, and it's particularly serious in the Lynn area, and you
12 sold on multiple occasions, and it's part of a repetitive
13 conduct in terms of a general pattern of criminal misconduct,
14 reflective, as your attorney says, of an addict. So you've
15 been in the system. It's illegal. It's killing people, maybe
16 not your drugs -- I don't know that -- and it's a big problem.
17 It's a plague for the Lynn area. And so I'm doing that both
18 because of the nature of the offense of selling so much heroin
19 but also because of the fact that it is a particular problem in
20 the Lynn area, and it's important to deter you from doing it
21 again and also to deter others in the neighborhood by saying,
22 you know, "You get in big trouble if you do this."

23 Second, in terms of your personal characteristics, you
24 know, the thing that stands out the most to me is actually the
25 lengthy criminal record, and, in addition, I notice you haven't

1 really worked much. We just had that discussion. And maybe
2 you were involved with gangs. I mean, it's just a bad
3 trajectory, and so I need you to as a personal matter move out
4 of this.

5 On the other hand, I do think both sides agree that a
6 lot of this stems from a drug addiction problem. That's part
7 of your individual -- I don't know why marijuana is drummed
8 out, but, in any event, it sounds like you do -- I forget, I
9 read it -- quite a bit of marijuana, and my guess is that
10 that's a serious part of your inability to work because -- I
11 think I read that somewhere. Hold on a second.

12 MS. WALLS: Yes, your Honor, I think he said he smokes
13 every day.

14 THE COURT: Yes, every day quite a bit, and so I think
15 that interferes with your ability to work. I do have it
16 somewhere here.

17 You also have a serious mental disease, as I'm
18 remembering. Yes, there it is. You said three blunts per day
19 since you were a teenager, and, of course, now there's the
20 heroin. And you also have mental health, so there should be
21 mental health treatment; substance abuse treatment, inpatient
22 if necessary; a recommendation to the drug court and/or the
23 Reentry Court; I think a stay-away order from the Latin gangs.

24 Do you have any particular affiliations, people you
25 want him not to be involved with?

1 MS. CUMMINGS: No specific people, your Honor. I
2 believe he still has to affirm the 851, however.

3 THE COURT: I couldn't hear a word you said.

4 MS. CUMMINGS: No specific people, your Honor, but I
5 believe he still has to affirm on the record the 851 prior
6 conviction.

7 THE COURT: Yes. By the way, do you affirm the 851
8 conviction, that conviction she talked about that you got the
9 distribution?

10 MR. BUDREAU: That is the one that we're attacking,
11 your Honor. As it stands now, it is a conviction, it is
12 something he was convicted for, yes.

13 THE COURT: All right, do you agree with that?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. So that's the one that was the
16 distribution out of?

17 MS. CUMMINGS: Lynn, your Honor.

18 THE COURT: Lynn. So basically eight years of
19 supervised release, no fine, and the \$400 special assessment.

20 Let me also say that you have lots of -- are you the
21 one? I've done so many sentencings. You have children, right,
22 from different wives? How many child support orders do you
23 have?

24 THE DEFENDANT: Two.

25 THE COURT: Two. So I order that you get employment

1 and that you, to the extent feasible, pay your child support.
2 Now, I don't know how old the kids are. That may be moot by
3 the time you get out. How old are your children?

4 THE DEFENDANT: Ten, nine, and maybe fourteen because
5 I don't know --

6 THE COURT: Well, this may be moot at that point, but
7 to the extent that they're still minors, to pay for child
8 support.

9 I'm going to run the sentence immediately so that
10 essentially it will run concurrently with the state court
11 sentence because I think that's appropriate. It's relevant
12 conduct, and essentially I think it would be greater than
13 necessary to run it consecutively.

14 Is there anything else that I need to talk about here?
15 Standard conditions of release?

16 MS. WALLS: The standard conditions, yes, the standard
17 conditions that require mandatory drug testing.

18 THE COURT: Yes, the maximum amount of drug testing.
19 And I must say that -- I think I've started seeing this myself
20 in these presentence reports -- that while marijuana may not
21 carry the same kind of penalties in the state as it used to,
22 three blunts a day will interfere with any ability to work or
23 have a productive life. And so I am ordering you, obviously
24 you have to comply not just with, you know, don't do heroin,
25 but also no marijuana at all. I don't think alcoholic abuse is

1 a problem for you, right? It's the marijuana. That's become a
2 little bit of an uncertainty on supervised release, what to do
3 with marijuana, but at least in this situation I'll make it an
4 express condition of release to make it really certain. So
5 there we go.

6 Anything else we need other than the notice of appeal
7 rights?

8 MS. CUMMINGS: No, your Honor.

9 MR. BUDREAU: No, your Honor. Thank you.

10 THE COURT: All right. And I have to say one thing to
11 the government. It is odd to sort of add in the 851 and then
12 withdraw it, but I do understand you wanted the basement for
13 it; but I was very glad, and I haven't always seen it, that you
14 didn't stick with that original sentence, which seemed way out
15 of proportion.

16 MS. CUMMINGS: Thank you, your Honor.

17 THE CLERK: Sir, can you please stand. The Court
18 hereby notifies you of your right to appeal this sentence. If
19 you cannot afford the cost of an appeal, you may move to
20 proceed in forma pauperis. Any appeal from this sentence must
21 be filed within fourteen days of entry of judgment on the
22 docket.

23 Do you understand these rights?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Okay, thank you.

1 THE CLERK: All rise.

2 (Adjourned, 3:08 p.m.)

3 C E R T I F I C A T E

4
5 UNITED STATES DISTRICT COURT)
6 DISTRICT OF MASSACHUSETTS) ss.
7 CITY OF BOSTON)

8
9 I, Lee A. Marzilli, Official Federal Court Reporter,
10 do hereby certify that the foregoing transcript, Pages 1
11 through 26 inclusive, was recorded by me stenographically at
12 the time and place aforesaid in Criminal No. 10-10366-PBS,
13 United States of America v. Yeudy Vizcaino, and thereafter by
14 me reduced to typewriting and is a true and accurate record of
15 the proceedings.

16 In witness whereof I have hereunto set my hand this 1st
17 day of March, 2012.

18
19
20
21
22 /s/ Lee A. Marzilli

23 _____
24 LEE A. MARZILLI, CRR
25 OFFICIAL COURT REPORTER